

GORDON R. EPPERSON ET AL.
d/b/a
TARGET OIL CO.

IBLA 74-104

Decided June 25, 1974

Appeal from decision of the Montana State Office, Bureau of Land Management, denying a petition to reinstate five oil and gas leases which had terminated by operation of law. M-7433-A(ND) Acq. through M-7436-A(ND) Acq., and M-8201-A(ND) Acq.

Affirmed.

Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

An oil and gas lease, terminated by operation of law for failure to pay timely the advance rental, may only be reinstated when it is shown that failure to pay the rental on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the rental from Dallas, Texas, to Billings, Montana, the day before its due date, does not constitute reasonable diligence.

Federal Employees and Officers—Authority to Bind Government

Rights not authorized by law cannot be acquired through misinformation given employees of the Bureau of Land Management.

APPEARANCES: James D. Voorhees, Esq., Moran, Reidy & Voorhees, Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Gordon R. Epperson, William J. Annis, and John G. Voight, d/b/a Target Oil Company, appealed from the August 20, 1973, decision of the Montana State Office, Bureau of Land Management (BLM), which

denied their petition to reinstate five oil and gas leases. These leases had terminated by operation of law for failure to pay timely the advance rentals. The rentals were due and payable no later than August 1, 1973, in BLM's office in Billings, Montana, but were not postmarked until "PM" on July 31, 1973, in Dallas, Texas, and were not received in the Bureau's offices until the morning of August 2, 1973.

The pertinent statute, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. However, 30 U.S.C. § 188(c) (1970), provides that a lease which has terminated by operation of law may be reinstated upon timely petition by the lessee if the failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Appellants assert that their leases should be reinstated since their employee, who is responsible for making such payments, assertedly relied on erroneous information given by an employee of the Montana State Office. Specifically, appellants assert that their employee was told that mailing the payments on July 31, 1973, would constitute timely payment of the rentals.

There can be no doubt that the leases in question terminated automatically by operation of law, since the payment was not made "on or before the anniversary date" as required by the statute and regulation, 30 U.S.C. § 188(b) (1970) and 43 CFR 3108.2-1(a). Noel Teuscher, 62 I.D. 470 (1955); see W. V. Moore, 64 I.D. 419 (1957).

Appellants urge, however, that their failure to pay on time does not stem from a lack of reasonable diligence, but rather from reliance on erroneous statements made to them by an unidentified employee of the BLM. They assert that precedents established by this Board indicate that mailing a payment one day before it is due normally constitutes a lack of reasonable diligence, but only in the absence of factors which are present in this case. They also assert that the statutory provisions for reinstatement were enacted to provide relief in cases involving the amount of annual payments where the lessee had relied on an erroneously calculated courtesy notice from the Bureau of Land Management. Therefore, they conclude they should also be given relief, since they relied on erroneous information given by an employee of the BLM.

We are not persuaded that the appellants' failure to pay the rental on time is either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires that annual

rental payments be sent sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of mail. Louis Samuel, et al., 8 IBLA 268 (1972); cf. R. G. Price, 8 IBLA 290 (1972). Mailing the rental the day before its due date does not constitute reasonable diligence.

Upon receipt of the State Office letter advising that the leases had terminated, Mr. William J. Amis, a partner in Target Oil, wrote a letter to the State Office requesting that the leases be reinstated. In this letter, dated August 14, 1973, Mr. Amis enumerated the reasons for the delay in making the payment, as follows:

- 1) Lease rental money was mailed on July 17, but did not reach this office until July 30.
- 2) Upon receipt of this money I called the BLM office and advised that we were paying rentals as of that date and proceeded to mail same by air-mail registered mail; however this did not reach your office until August 2, 1973.
- 3) If Federal mail service had been prompt as assured by local postmaster these rentals would have been in your office by the first.
- 4) We are conducting seismic investigation in this area at the present time preparatory to planning a Red River test in the vicinity of these leases provided we can still lay claim to them.

We note that the last payment was ascribed to the delay in the mail between the source of the money and appellant's Dallas office. Although a call to BLM on July 30, is mentioned, there is no reference to any assurance by a Bureau employee that a late payment would be accepted. Also, Mr. Amis states "I called the BLM office and advised * * *," whereas the allegation on appeal is that Paula Gatlin made the call and received incorrect advice.

After reinstatement of the leases was denied by the State Office, counsel for the appellant wrote to the Chief, Land and Minerals Adjudication Section in the Montana State Office, inquiring as to the identity of the person to whom Mrs. Gatlin spoke. The Chief replied in a letter dated September 18, 1973, stating, in part as follows:

* * * Based on the information you did furnish, no one in the Oil and Gas Adjudication Section remembers talking

with Mrs. Gatlin on July 30, 1973. This is not to imply a call was not received by this Bureau, but it was not placed with personnel of oil and gas adjudication.

I distinctly remember talking with a representative of Target Oil Company sometime in August. The caller did not refer to specific case files, but rather presented the question in general terms. I specifically replied a Notice of Termination is sent for every late pay case. The subsequent action we take is governed by the response to the Termination Notice. Absolutely no decision could or can be made by this office until a reply is received.

In an endeavor to verify Mrs. Gatlin's assertion, this Board directed an inquiry to the BLM State Director on March 27, 1974.

We received the following response:

April 24, 1974

Dear Mr. Fishman:

The adjudicative organization in this office as of July 30, 1973, consisted of the Chief, Lands and Minerals Adjudication, Chief, Minerals Adjudication, and Chief, Lands Adjudication. The Chief of Lands and Minerals Adjudication (Sire) was on leave for the period of July 27 to August 2, 1973, and acting in his capacity was Mr. Leigh Freeman, then carrying the title of Chief, Lands Adjudication. Mr. Freeman has no recollection of conversing with Mrs. Gatlin and as requested, enclosed is his statement to that effect.

We have canvassed all employees in the State Office who conceivably could have received a phone call from Mrs. Gatlin, and no one remembers talking with her on July 30, 1973.

Sincerely yours,

(Sgd.) Harold C. Lynd
Acting

The enclosure read as follows:

April 10, 1974

I was Acting Chief, Lands and Minerals Adjudication for

the period July 27, 1973, to August 2, 1973.

I absolutely have no recollection of receiving any telephone calls from a Mrs. Gatlin or any other individual regarding oil and gas lease rentals due on August 1, 1973. This issue of rental receipts was so sensitive at that time I am sure I would recall any inquiries regarding this question. Since my basic work is in lands and not minerals, I would not have been in any position to answer the question without receiving counsel from a mineral adjudicator. This condition would have been further reason for being able to recall a telephone call of this nature.

(Sgd.) Leigh W. Freeman
Supervisory Lands Adjudicator

We are unable to find on the basis of the present record that appellant's failure to pay rental timely was either justifiable or not due to a lack of reasonable diligence. Monturah Company, 10 IBLA 347 (1973). See R. H. Parks, 10 IBLA 287 (1973).

This Board has held that rights not authorized by law cannot be acquired through misinformation given by employees of the Bureau of Land Management. Ralph W. Griffen, 10 IBLA 289 (1973); Richard O. Morgan, 10 IBLA 141 (1973); Arland E. Purington, 10 IBLA 118 (1973); cf. Superior Oil Co., 12 IBLA 212 (1973). In view of the paucity of proof that misinformation was afforded appellants by agents of BLM, we need not decide whether, if the facts asserted by appellants were established, relief would be appropriate under 30 U.S.C. § 188(c) (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Martin Ritvo
Administrative Judge

